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MARK S. PELOQUIN
PELOQUIN, PLLC
SUITE 4100
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SEATTLE, WA 98104-3100

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OFFICE OF PETITIONS

In re Application of
Howard M. Lee
Application No. 10/691,777
Filed: October 22, 2003
Attorney Docket No. 062403.P001

DECISION ON PETITION

This is a decision on the petition, filed August 3, 2009, which is being treated as a petition under 37 CFR 1.181 (no fee), requesting withdrawal of the holding of abandonment in the above-identified application.

The petition is **GRANTED**.

This application was held abandoned for failure to timely respond to the Non-Final Office action mailed January 6, 2009, which set a three-month shortened statutory period for reply. Accordingly, a reply was due on or before July 6, 2009, with a three (3) month extension of time.

Petitioner states that a reply was in fact timely filed. To support this assertion, petitioner has submitted a copy of the Express Mail label receipt No.EB583248349 and a copy of the return postcard which acknowledges receipt by the U.S. Patent and Trademark Office (USPTO) on July 6, 2009. A copy of the previously submitted reply accompanies the petition.

The reply acknowledged as having been received in the USPTO on July 6, 2009, is not of record in the application file and has not to date been located. However, MPEP 503 states that "[a] post card receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO." Accordingly, it is concluded that the response was timely received in the USPTO.

In view of the above, the holding of abandonment is hereby withdrawn and the application restored to pending status.

The application is being referred to the Office of Patent Application Processing (OPAP) for further processing.

Telephone inquiries related to this decision should be directed to Alicia Kelley at (571) 272-6059. Telephone inquiries related to processing at OPAP should be directed to their hotline at (571) 272-4000.



Chris Bottorff
Petitions Examiner
Office of Petitions